

REMARKS/ARGUMENTS

Upon entry of the present amendment, claims 1-4, 9-10, 13-16, 19-20 and 22 will be pending in this application and presented for examination. Claims 5-6, 18 and 21 have been canceled without prejudice or disclaimer. Claims 1, 9, 13-14, 19 and 22 have been amended. Reconsideration is respectfully requested.

At the outset, Applicants and their undersigned representative wish to thank Examiner Venkat for the personal interview held on April 24, 2006. During this interview, a number of issues were clarified. Applicants thank Examiner Venkat for her time and the courtesy of extending the personal interview.

I. FORMALITIES

In an earnest effort to advance prosecution of the subject application, claims 1, 9, 13 and 22 have been amended to set forth that the antifungal agent is an azole. Support for the amendment is found, for example, in canceled claim 21. Additionally, claim 1 has been amended to incorporate the subject matter of original claims 5 and 6. Other amendments to the claims were made to correct or otherwise update claim dependencies in view of the changes to the claims. Thus, no new matter has been entered with the foregoing amendments. Applicants respectfully request that the Examiner enter the amendments.

II. REJECTION UNDER 35 U.S.C. §103(a)

Claims 1-6, 8-10, 12-16 and 18-22 stand rejected under 35 U.S.C. §103(a) as allegedly being obvious over the combination of U.S. Patent No. 5,866,152 ("the '152 patent"), International Publication No. WO 87/04617 ("the 617 publication") and U.S. Patent No. 6,207,694 ("the 694 patent"). To the extent the rejection is applicable to amended set of claims, Applicants respectfully traverse the rejection.

Claim 1 has been amended to recite certain preferred features of the present invention. For example, claim 1 has been amended to set forth that the antifungal agent is an

azole and that the organic bulking agent is selected from polyethylene glycol having a molecular weight of 200-800, and propylene glycol.

Applicants submit that there is simply no motivation or suggestion provided in the cited references to modify their teaching to arrive at Applicants' claimed invention. Applicants have disclosed a non-aqueous shampoo composition that is suitable for formulating additives that are incompatible with a water-based shampoo.

In contrast, the '152 patent discloses a shampoo composition that is a water-based shampoo. The '152 patent describes that water is intentionally added to the shampoo "as the balance" to the composition and thus water is intended to be a part of the formulation (*see*, column 2, line 36). Further, attached is a spreadsheet¹ that provides an analysis of the actual water content in Production Examples 1-9 in columns 3 and 4 of the '152 patent. As shown therein, the water content in the compositions of the '152 patent is actually very high -- greater than 40% by weight. This analysis supports Applicants' assertion that the compositions of the '152 patent are most appropriately characterized as aqueous compositions, due to this high water content.

Moreover, the deficiencies of the '152 patent to teach Applicants' substantially non-aqueous composition are not supplied by the disclosures of either the '617 publication nor the '694 patent. Neither of these secondary references teaches nor suggests a substantially non-aqueous shampoo composition. Rather, the '694 patent simply describes another aqueous shampoo composition for dandruff. The '617 publication discloses a liquid pharmaceutical composition for application to infected nails and skin; the composition comprising polyethylene glycol or propylene glycol (40-80%), lactic acid and urea. While the '617 publication does describe a composition having higher amounts of polyethylene glycol or propylene glycol, the '617 composition does not suggest a shampoo composition, as is presently taught and claimed.

In view of the above, Applicants submit that the combined disclosures of the '152 patent, the '617 publication and the '694 patent do not teach or suggest the non-aqueous shampoo composition as is presently claimed.

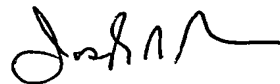
¹ The spreadsheet is attached as an Exhibit.

III. CONCLUSION

In view of the foregoing, Applicants believe all claims now pending in this Application are in condition for allowance. The issuance of a formal Notice of Allowance at an early date is respectfully requested.

If the Examiner believes a telephone conference would expedite prosecution of this application, please telephone the undersigned at 925-472-5000.

Respectfully submitted,



Joseph R. Snyder
Reg. No. 39,381

TOWNSEND and TOWNSEND and CREW LLP
Two Embarcadero Center, Eighth Floor
San Francisco, California 94111-3834
Tel: 925-472-5000
Fax: 415-576-0300
Attachments
JS:sc
60760808 v1

Production Examples from Takabayashi (US 5,866,152)

		Production Example 1	Production Example 2	Production Example 3	Production Example 4	Production Example 5	Production Example 6	Production Example 7	Production Example 8	Production Example 9
Excipients	Note:	%w/w	%w/w	%w/w	%w/w	%w/w	%w/w	%w/w	%w/w	%w/w
Nikkol SBL-4T	1	66.70	66.70					66.70	66.70	66.70
Nikkol TEALS-42	2			66.70	66.70	66.70				
Nikkol ECTD-3NEX	3									
Pyriproxyfen		0.10	0.10	0.10	0.10	0.10	20.00	0.10	0.10	0.50
d-Phenothrin								4.00		
Permethrin									4.00	
PEG 400		5.00	10.00							5.00
Propylene Glycol				5.00	10.00		10.00	10.00	10.00	
PPG 2000						10.00				
Distilled Water		28.20	23.20	28.20	23.20	23.20	69.90	19.20	19.20	27.80
Total		100.00	100.00	100.00	100.00	100.00	100.00	100.00	100.00	100.00

Water content:

From Anionic Surfactant (ie Nikkol's)	=	20.01	20.01	28.01	28.01	28.01	17.00	28.01	28.01	28.01
From Distilled Water	=	28.20	23.20	28.20	23.20	23.20	69.90	19.20	19.20	27.80
Total %w/w Water	=	48.21	43.21	56.21	51.21	51.21	86.90	47.21	47.21	55.81

Notes:

- 1 Nikkol SBL-4T = (30% aqueous solution of TEA Laureth-4 Sulfate)
- 2 Nikkol TEALS-42 = (42% aqueous solution of TEA Lauryl Sulfate)
- 3 Nikkol ECTD-3NEX = (85% aqueous solution of Sodium Trideceth-4 Carboxylate)

EXHIBIT